App. F. IX-4.

1925.6.

(G.F.)

File No. G.F. 255.25

Serial Nos. 1 & 2.

Previous references.
G.f. 34.13.2, 4 & 10.
G.f. 7.24.23 & 30
G.f. 7.24.43 & 71.

Later references.
~~G.f.~~ 1926 116 & 26-27

Preserve
13
8/9/45

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two.

Part B for August 26

SUBJECT

Solicits orders of Govt. in regard to certain points in connection with the recognition and registering in respect of Mysore Govt. Securities legal documents granted only by Competent Courts of Law in Mysore by the Deputy Controller of Currency Bombay and the payment of interest on Mysore Govt. Securities in British Treasuries.

Secn. 2. To The Comptroller to Govt.

No. 1570 dated 18th August 26

Requests that action may be taken as suggested by him on the points referred above.

D 5048

Subd

1. The references quoted are not available here & have to be got from Hd. Quarters - Bangalore. ~~Today~~ An immediate requisition has been sent to Bangalore for the files. Since to morrow & day after are holidays, it may not be possible to get references for 3 or 4 days. ~~this~~ As the receipt is marked immediate it is put up for orders. If approved this will be worked up as soon as references are available

By 19/6

2. Please rep & submit
I know the facts - I shall
arise in new
By

20/6

D5018

WD 01264—GPB—40,000—17-12-25

General and Revenue Secretariat

G.f File No. 255 of 1925.

Serial No	
1	From the Comp^{y} to Gov^{t}. Letter No. S.-L.4144 & 15/6/1926 solicits orders of Gov^{t} in regard to certain points in connection with the recognition & registering in respect of Mysore Gov^{t} Securities legal documents granted only by competent Courts of law in Mysore by the Deputy Controller of Currency, Bombay & the payment of interest on Mysore Gov^{t} Securities in District Treasuries of British India.
	3 Registered in Branch Diary & Subj^{d} as ordered on the slip attached to p.W.D. (para 2 of notes)
	4 Have the papers referred to been read vide H.D. Q^{rs}?
	5 References sent up & file resub^{d}.
	6 Points for orders are marked (1) & (2) in P.W.D. As regards (1) the Comp^{y} himself doubts whether the ~~Court~~ Deputy Controller of Currency will undertake to record a note of Registration of documents in such cases or to certify endorsements. He however suggests two alternatives, the latter of which — viz certifying endorsements — appears to be more feasible and to which the Dy: ~~Court~~ Controller may be prevailed upon to agree. As regards (2) (a) — the ~~Court~~ Dy: Controller of Currency Bombay may, perhaps be requested to recognize and register legal documents granted in respect of Mysore Securities by competent Courts of law in Mysore as suggested by Comp^{y}. (b) But it appears rather delicate to ask the Dy: Controller of Currency to discount payment of interest on promissory notes on the strength of

Left on 24.6.26

Rec'd at H.D. Rns. 24/6/26.

NOTE— Combn. Sheet

Serial No

~~Succession~~ documents such as probates, letters of administration ~~or~~ obtained in Br. India, ~~for it may~~ ~~not be~~ ~~assumed to a direction that the Controller of Issue must not recognise legal documents of their own Govt. in respect of~~ ~~Bonds~~. As a sort of concession, ~~the~~ Govt. of India have agreed to ~~the~~ arrangement ~~whereby~~ payment in Br. Indian Treasuries of interest ~~of~~ on Foreign Govt. Securities is being made.

8. L & L. Secy. may be consulted, if necessary Submd. for orders.

Bz 25/6

9. This question has been decided already. The L & L. Secy has held & much that we need not insist on ~~his~~ Certificates. Let the bonds come to us. Please put papers up

Bz 22/7

10. It is not traceable in what connection the L & L. Secy. had given the opinion referred to in para 9. The Comptroller's office was also informally consulted & they are also unable to furnish the information.

Bz 27/7 HHK 25/7/26.

NOTE—Contn. Sheet

WD 01264—GPB—40,000—17-12-25

General and Revenue Secretariat | File No. | of 192 .

Serial No

\\ Two points arise in this case for orders, viz., (1) that the Deputy Controller of Currency at Bombay should be requested to certify on the endorsements in all cases with regard to the registration in his books of the documents necessary in order to make the chain of endorsements complete and

(2) the procedure in respect of documents which according to our present practice requires that the necessary documents should be taken out from ~~issued by~~ a competent Court of Law in Mysore and that the Deputy Controller of Currency should be requested not to pay interests in such cases unless the necessary documents are obtained from the Mysore Courts.

12/ With regard to (1) it is very doubtful if the Deputy Controller of Currency would undertake to do this work for us. Prior to the present arrangement of payment of interest by the Deputy Controller of Currency the Imperial Bank of Bombay was paying the interest but they demanded remuneration being paid by the Government of Mysore and after some correspondence it was decided that the Mysore Government need not pay remuneration and the Deputy Controller of Currency accordingly took up the work of payment. If now we ask the Deputy Controller of Currency to do the work above referred to or in any manner try to interfere with the working of the present arrangements the Deputy Controller may again urge that the work be transferred to the Imperial Bank the Mysore Government paying them necessary fees. After all the work involved in paying interest on our loans at Bombay

Please put up the file

B
30/
put up - flag H.

NOTE— Contn. Sheet

Serial No

is very heavy and the pleas of reciprocity which we urge may not go very far to recompense them. When we are in this position, I think, it is not desirable to interfere in the existing state of affairs. We may let well alone.

13. With regard to the second para, viz., the Deputy Controller of Currency paying interests on documents which require to be executed in Mysore or taken out from a competent Court of Law in Mysore, I think, he will have no objection to refuse to pay interest in such cases unless the necessary certificates are furnished. I may, however, add that I was associated with the work, the State Loan Section since its inception and in my experience I do not think we had cases which required documents to be taken out in Mysore Courts on which Bombay had paid interest but perhaps there was no need for more to come to our notice as the bonds may have been circulating in Bombay & we would not get the bonds here unless an enforcement or renewal were needed.

Ba 30/7

Finl Fy)

14. As regards point (1) I think the Comptr's alternative proposal of requiring the Dy Comptr of C.A. to certify endorsements in the cases referred to when the bonds come here for renewal &c may be approved. The D.C.C may probably accept the arrangement. If he does so, it will save considerable time

5978 Vb. 5048

G. R. S. III-2]

WD 2810—GPB—10,000—31-5-24

General and Revenue Secretariat. | File No. | of 19

Serial No.

A delay in the disposal of applications for renewal, consideration of which is by the Audit opinion here.

(2) As regards the 2nd question raised by the Comptr., the question is not merely one of loss of Stamp Revenue, but of the legality of the documents in question having regard to the Calcutta High Court's decision in the case of Ramaswami Chettiar vs. Muthuswami Chettiar, reported in I.L.R. 47 Madras 1924 page 1. The L. D. Dept's opinion is requested on this point.

To L. D. Dept with Comptr's compliments.

31.7.26.

(3) As regards the 2nd point, I herein enclose my opinion given on a similar point raised on a former occasion.

4. In this connection may I invite your kind attention to Sec 17 in the British Indian Enactment & to the absence of such a provision in our Regulation & to state that in view of popularising our Securities in British Indian market & in English markets, whether in your opinion such a provision with suitable modifications is necessary to be made in our Regulation to facilitate transfers etc.

5. On hearing from you necessary action will be taken in the matter.

FINANCIAL SECRETARY
6 AUG. 1926
No.

FINANCIAL SECRETARIAT
5 AUG. 1926

NOTE—Contn. sheet.

To be taken up after disposal of this file by the Legal Dept.

Dept with Comptr's

Dept with Comptr's

O P I N I O N.

.....

My opinion has been asked on the question whether the Succession Certificates granted by Courts outside Mysore may be acted upon in cases of Mysore Government Securities and whether these certificates entitle the holders thereof to give valid acquittances so as to afford immunity to persons paying debts to them.

The fundamental principle of law is that a debtor is not bound to pay the amount to one who cannot give a valid discharge for it and that he is entitled to demand that the representative of the deceased creditor shows sufficient authority to give a valid acquitance therefor. He may also, if he chooses pay to any person whom he considers as the representative of the deceased creditor, but then in a suit by a rival claimant or by a certificate holder he will be bound to show that the person to whom he paid the debt was the real heir-at-law to the deceased.

The Succession Certificate Regulation has been designed specially to protect parties paying debts to the representatives of deceased persons holding certificates granted under the enactment. The relevant portions of the Regulation are referred to below. The Regulation extends to the whole of Mysore(Section I). The District Court within the jurisdiction of which the deceased resided or the assets of the deceased are found may grant a certificate (Section 5). A certificate under the Regulation shall have effect throughou Mysore (Section 15) and the certificate of the District Court shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities and shall afford full indemnity to all such persons as regards all payments made, or dealings had in good faith in respect of such debts or securities, to or with the person to whom the certificate was granted (Section 16). The expression (District Court) has been defined in Section 3 to mean only a District Court in Mysore.

As the indemnity arises out of the act of the legislature in Mysore, the provisions contained in the Local enactment and the procedure indicated therein should be followed if the privilege of protection afforded by Section 16 is to be availed of by the debtor. It is only a certificate granted by the Mysore Courts under the Mysore Regulation that can so afford protection.

Further, under Section 4(1)(d) (ii) of the Regulation the Civil Courts will not also recognise the representative character of the individual unless a certificate granted under this Regulation by the Local Courts is produced.

An examination of the corresponding Act of British India shows that there are similar provisions therein to those of the Mysore enactment so that under Sections 1 and 5 of that Act the certificates granted by the British Indian Courts can be operative only in British India. ~~Posi~~ Besides under Section 8 of the Act the certificate should specify debts and securities set forth in the application for the certificate. "Security" as contemplated in the Act has been defined in Section 3 to mean any Promissory Note, debenture, stock or other security of the Government of India or any other security which the Govenor General in Council may by Notification in the Gazette of India declare to be a security for the purposes of this Act. As the Mysore Government Securities are not included within the definition of the term "Security" used in the Succession certificate of British India no application for a certificate can include the Mysore securities and the Courts in British India would also be debarred from issuing a certificate in respect of such securities. The certificate if any, embracing the Mysore Securities would be one granted without jurisdiction and consequently invalid in law unless it is viewed as a debt.

"In regard to the title of executors and administrators" says Story "Conflict of Laws, 8th edition Section 512) "derived from a grant of administration in the country of domicile of the deceased, it is to be considered that

that title cannot de jure extend, as a matter of right, beyond the territory of the Government which grants it. It has hence become a general doctrine of the common law that no suit can be brought or maintained by an executor or administrator in his official capacity in the courts of any other country except that from which he derives his authority to act, in virtue of the probate and letters testamentary or the letters of administration there granted to him. If he desires to maintain a suit in any foreign country, he must obtain new letters of administration and give new security according to the rules of law prescribed in that country before the suit is brought."

Following this well known principle of law, the Madras High Court have held that for entitling a person under Section 4 of the Succession Certificate Act to sue in British India in respect of the assets of a deceased the probate or certificate obtained in the Court of a Native State cannot be recognised (See 17 Madras p.14).

For the foregoing reasons I am of opinion that the Succession certificate in respect of Mysore Securities should be those issued by the Mysore Courts and that payment in accordance with such certificates alone can afford protection to debtors under Section 16 of the Regulation.

Incidentally I find that there is a provision in Section 17 of the British Indian Act which runs as follows:--

"Where a certificate in the form as nearly as circumstances admit, of the second schedule has been granted to a resident within a Foreign State by the British representative accredited to the State, or where a certificate so granted has been extended in such form by such representative the certificate shall when stamped in accordance with the provisions of the Court Fees Act, 1870, with respect to certificates under this Act, have the same effect in British India as a certificate granted or extended under this Act."

Effect of certificate granted or extended by British representative in Foreign State.

According to this provision parties in a foreign State may first establish their representative right in the courts

of the State and then apply to the British Agent to issue a certificate in his name. Such certificate when stemped in accordance with the provisions of the British Indian Court Fees Act has the same effect as a Certificate granted by the British Indian Court. By a similar provision in our Regulation, legislative sanction may be obtained for recognising the certificates of outside courts on their being stamped here in accordance with the provisions of the Court Fees Regulation.

It is a fundamental principle of law that when a statute imposes conditions to be fulfilled before a certain action is taken, those conditions are to be strictly complied with before any immunity can be claimed for the action taken; and that the statutes framed by the Legislature of one country can bind only those who owe allegiance to the sovereign enacting such laws and have no operation beyond the sovereign's territorial jurisdiction. Tested in the light of these principles, the certificate granted by a court in another State has no operation in Mysore and can afford no immunity for any payment made to the holder of such certificate. Hence the Government will not be justified in acting upon the certificate now produced.

(Sd) B.Nagappa.
9-1-1926.

General and Revenue Secretariat | File No. | of 192

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20 In accordance with legal opinion the Comptroller may be advised to take action as proposed in the last para of his letter

21 A draft reply may be put up accordingly both the points referred to. Vide also my note of 31.7.26. h 6.8.26.

P.S After this case is disposed of

22. the suggestion also A in the L.L. may kindly be taken up. h

23 Draft Subd. (It does not appear necessary to send copy of L.L. Secy's opinion to Comptr in extenso)
If approved a separate file will be started for pursuing the point at A
B 11/8 HK 11826.

B 12/8

Secs) 24. Clean draft h 13/8 B

25. Clean off - put up
B 14/8 HK 14826.

B 16/8

Secs)
2nd member) h 16/8 B

Mem 17.8.26

Secy 17.8

B 19/8

To the Comptr - Letter No. 1570 of 18/8/26.
Requests that action may be taken as suggested by him on the points mentioned in his letter.

FINANCIAL SECRETARY 11 AUG. 1926

FINANCIAL SECRETARY 13 AUG. 1926 No.....

FINANCIAL SECRETARY 16 AUG. 1926 No. 250

OFFICE OF THE SECOND MEMBER OF COUNCIL 16 AUG. 1926 No. 6302

B 19/8

NOTE—Contn. Sheet

WD 0663—GPP—6000—11-9-25

C. O. 42. Gl.

OFFICE OF THE COMPTROLLER TO THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. S.L. 4144. *Bangalore, Dated...* 15th June *192* 6.

DIARY NO. 5048

1925 — 1926
Section. G.F.
File No. 255-25
Serial No. 1

From

T. SATYARAJ CHETTY, Esq., B. A.,
Comptroller to the Government of
His Highness the Maharaja of Mysore
Bangalore.

To

B. Srinivasa Iyengar Esq., B.A., B.L.,
Offg: Financial Secretary to the
Government of Mysore, Bangalore.

FINANCIAL SECRETARIAT.
19. JUN. 1926

Sir,

I have the honor to address you on the subject of the payment of interest on Mysore Government Promissory Notes in Bombay. In this connection I would invite a reference to correspondence ending with your letter No. Fl.6093/G.F.34-13-7 dated the 22nd April 1915 regarding payment of interest on Mysore Government Securities in all the District Treasuries in British India, and to state that payment of interest is now being made by these treasuries on the authority of Circular No. Dckt.312/99-14 dated 12th March 1915 from the Controller of Currency to all Accountant-Generals and Controllers; para 4 of the Circular runs as under:-

"The Treasury Officers should maintain separate registers in respect of Mysore Government Securities, namely, the Registers of Enfaced Notes and the registers of Powers of Attorney, Pro-bates &c, required under Articles 179 and 215 of the Civil Account Code. The list prescribed under Article 181 of the Civil Account Code should be prepared by Treasury Officers and submitted to the Accountant-General or Comptroller, and, after check in his office, should be forwarded to the Comptroller, Mysore."

Payment of interest in Bombay, is however, being made by the Deputy Controller of Currency, since September 1922, after the office of the Deputy Controller of Currency was created. It is observed that in paying interest on Mysore Government Promissory Notes which contain endorsements by the Agents and Managers of Banks in Bombay, under

powers

powers of attorney granted to them, no record is made on the back of the note giving particulars of the document and the nature of the power granted, as required in para 50.of the Government Securities Manual. When notes containing such endorsements are subsequently received in this office either for enfacement, or renewal etc it will not be possible to accept these endorsements without note being made of the power having been registered, or without certification by the Deputy Controller of Currency. As Banks in Bombay are numerous and heavy work would be entailed in registering all documents, powers of attorney etc of these Banks, it is more than doubtful if the Deputy Controller of Currency will agree to record a note of registration of documents in all such cases, or to undertake certification of endorsements. If either of these courses is not adopted, considerable inconvenience will be caused to holders of notes who send them subsequently to this office, by insisting upon the necessary documents being registered in this office. Further it does not also seem proper to call for documents when the title of a subsequent holder will have been recognised by the Deputy Controller of Currency and interest paid for several half years. In these circumstances, I request to be informed if the Deputy Controller of Currency should be asked to register documents in all cases according to rules, before paying interest on Mysore Government Notes, and to record the fact of such registration on the back of the notes, or in the alternative, whether he is prepared to certify endorsements in all cases where documents have been registered on his books but not in this office. It is presumed, that when this has been done, it is not necessary to call for the documents for registry in this office, in accordance with the ruling given in Financial Secretary's letter No. Fl.5300/ ~~Fl.~~ G.F. 7-24-71 dated 28th March 1925 on the subject of certification of endorsements by the Public Debt Office, Madras.

I have also to state that the Deputy Controller of Currency registers Succession Certificates, probates etc granted by British Indian Courts in his books and acts upon the authority of these in respect of Mysore Loans. According to the ruling of Government given in Government Order No. Fl.1926/G.F.7-24-30 dated 30th September

1924

1924 such documents have no validity with respect to Mysore Government Securities and this point was specially made ~~even~~ clear to the Imperial Bank in Madras in this office letter No. S,L.5198/ dated 16th April 1925 by whom the restriction has been observed. A large sum is also lost to Government in stamp duties etc by the present procedure of the Deputy Controller of Currency in Bombay. When once the documents have been accepted by him, this office cannot reasonably insist upon their registration subsequently in this office. At the same time it was stated that if the restriction were insisted upon to be strictly followed, the transferability and therefore, the popularity of the Mysore Government Securities in the Bombay Market would be seriously jeopardised. I request therefore to be informed if the Deputy

(2) Controller of Currency, Bombay should now be informed that he

(a) could recognise and register, in respect of Mysore Government Securities, legal documents granted only by competent courts of law in Mysore, and that payment of interest by him should be discontinued on promissory notes on which interest has hitherto been paid

(b) on the strength of documents such as probates, letters of administration etc obtained in British India. In this connection, I invite your kind reference to para 111 of Mr. Ganapathi Iyer's Deputation Notes, in which some remarks have been made on the subject of the payment of interest on Mysore Government Securities in Bombay.

I have the honor to be,
Sir,
Your most obedient servant,

J. Lakshmana Chetty

Comptroller.

SAM

G.F. 255-25-2

Clean draft

H 1570/ dated 18-8-26

Re:

(1) Certificate by the Deputy Controller of Currency of endorsements on pronotes by Agents and Managers of Banks in Bombay.

(2) Validity of succession certificates and Probates &c., granted in British Indian Courts in respect of transfer of title to Mysore Government Securities.

To

The Comptroller to Government,

Sir,

With reference to your letter No.S.L.4144 dated 15-6-26 soliciting instructions on the marginally noted points arising in the matter of payment of interest on the Mysore Government Securities in Bombay, I am directed to state that, as regards the 1st point, the Deputy Controller of Currency, Bombay, may, as suggested by you in the alternative, be requested to certify endorsements in all cases where documents evidencing title have been registered in his office ~~or~~ but not in your office.

2. As regards the recognition by the Deputy Controller of Currency of succession certificates and probates etc., granted by British Indian courts and the payment of interest by him on Mysore promissory notes on the strength of such documents, I am to state that, as this Government will not be justified in accepting such certificates as evidence of legal title, action may be taken to address the Deputy Controller of Currency as proposed by you in the last para of your letter under advertance.

I have etc.,

16/8/26

Financial Secy to Govt.

B/P 14/8

14/8/26

Mem 6.8.26